

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-004-12-1-5-00274-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-03-35-301-003.000-004  
**Assessment Year:** 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2012 assessment of his property located at 479 N. Cline Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$154,200 (land \$153,200 and improvements \$1,000).
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On February 18, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: Notice of Hearing; Property record cards (“PRC”s) (2009-2012, 2016-2019); GIS map; U.S. Department of Justice letter dated September 16, 2014 and “Application for Administrative Warrant”
  - Petitioner Exhibit B: Request for Public Record
  - Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street; land comparison approach; PRC (2015-2019); and tax bill

Petitioner Exhibit D:	Cover letter for Kovachevich appraisal for 739-29 W. 35 <sup>th</sup> Avenue; land comparison approach; and PRC (2015-2019)
Petitioner Exhibit E:	Cover letter for Kovachevich appraisal for 2517-2525 Washington Street; land comparison approach; and PRCs (2015-2019) for each parcel
Petitioner Exhibit F:	Enlargement of page 17 (land comparison approach comparable sales list from appraisals)
Petitioner Exhibits G-GG:	PRCs for the properties listed in the land comparison approach <sup>1,2,3</sup>

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. Here, the assessed value of the property decreased from 2011 to 2012. Nowacki therefore bears the burden of proof.

### **OBJECTIONS**

7. The Assessor objected to Petitioner Exhibits C, D and E on grounds of admissibility. He also objected to B through GG on relevance. The Assessor argued the appraisals are not for the subject property, and Nowacki is not an intended user or authorized to use the appraisals. The Assessor also cites to a Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinion, which states that while a person may have a copy of an appraisal, that person is not an intended user unless he was specifically identified by the appraiser. Nowacki received the appraisals in response to a Freedom of Information request. The ALJ took the objections under advisement. Because the exhibits provide information about other Lake County properties, they have at least minimal relevance to this proceeding. Whether Nowacki is listed as an intended or authorized user for these

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<sup>1</sup> Exhibit F lists a PRC for 4522 Cedar Avenue in Hammond, but no PRC for that address is found in the exhibits.

<sup>2</sup> Nowacki provided only one set of Exhibits B-GG for all hearings held this date. 52 IAC 2-7-1 provides that evidence must be submitted into the record of proceeding for it to be considered by the Board. In future hearings, the parties must prepare and submit a copy of all evidence they wish to be considered into the record at each hearing.

<sup>3</sup> The Assessor submitted no exhibits.

appraisals is not sufficient reason to exclude them. We therefore overrule the objections and admit Exhibits B-GG. We note that these exhibits do not affect the outcome.<sup>4</sup>

### SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. The Assessor has assessed this property from \$450,000 to \$76,000 over the past several years. It is inexplicable why the value has gone up and down so many times. The property was formerly an improperly operated landfill. Nowacki has not been able to access the property since the Environmental Protection Agency ("EPA") took control of it in 2014. The property was a Brownfield site when he filed the 2012 appeal. There had been no action on the environmental issues by the EPA at the time he bought the property. There is no longer any improvement on the property. Nowacki is asking for a value of \$120,000 for 2012. *Nowacki testimony; Pet'r Ex. A.*
9. The Assessor's case:
  - a. The property was accessible to Nowacki in 2012, and had not yet been locked down by the EPA. The Assessor is recommending no change to the PTABOA's value. *James testimony.*

### ANALYSIS

10. Nowacki failed to make a case for reducing the 2012 assessment. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct.

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<sup>4</sup> The parties did not state any objections during the hearing or reference objections in previous hearings related to Exhibits B-GG. We have chosen to address the objections to those exhibits made consistently by the Assessor in all previous hearings this date. However, the parties must at least reference and indicate the nature of the objections made in previous hearings in order to preserve them for future records. 52 IAC 2-7-2.

2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1<sup>st</sup> is the legal assessment date for 2012. Ind. Code § 6-1.1-2-1.5(a).

- c. Nowacki contends the assessment should be \$120,000, but he failed to present any probative market-based evidence to support that value. Nowacki failed to relate the evidence of the EPA's actions in 2016 to the 2012 value in issue here. He also did not prove what effect the condition of the property had on its assessed value in 2012. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2012, he failed to make a case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order no change to the assessment.

ISSUED: May 5, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.